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PRELIMINARY STATEMENT

In the Matthew E. McMillan=s Rebuttal to the Judicial Qualifications Com mission=s Reply Brief, the following symbols will be used:

AJQC@ B Judicial Qualifications Commission

AT@ B transcript of hearing before the Commission Panel

AExh@ B Defense Exhibits filed at the Final Hearing

AApp@ -- Appendix

AFCR@ B Findings, Conclusions and Recommendations by the JQC Hearing P anel

ARes@ B McMillan=s Initial Response to the Court=s Order to Show Cause

ARep@ B Judicial Qualifications Reply Brief

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE,

Nos. 99-10 & 00-17, Matthew E. MCMILLAN :

CASE NO.95,886 &00-703

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· Witness Testimony as to Fitness for Office

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Testimony Relating to Judge McMillan=s Remorse, including testimony characterized by JQC as AMcMillan refused to express any regretY@ (Rep . 46)

CHARGE 1 B Police Officer Letter

Judge McMillan has admitted repeatedly that the letter to police officers was an error in judgement for which he is genuinely remorseful. (See App. L) The JQC continually misrepresents the record in a desperate attempt to raise doubt regarding his sincerity. Thus the following areas beg clarification:

Contrary to the JQC=s Reply at p.10, McMillan did not A*assert as a defense*@ that

he made the Ago to bat@ statement to a small group of police officers. He offered that info rmation to counter the implication that the letter helped secure his election, and in respo nse to the Finding at p.19 that he intended to mislead the public. The JQC found it nec essary to convict McMillan of wrongful intent in its Findings, then criticizes him in its R eply for responding that his motives were well-intentioned.

Furthermore, the Panel misrepresented the record by stating *ADespite his regret fo r sending the letter, Judge McMillan stated he actually reread the letter and made a corr ection in it before he sent it out a second time (T.118-9). Thus the letter was not a mom entary lapse in good judgement in reaction to outside events.@*(FCR.12) The JQC=s assert ion that A*[McMillan] made a correction in it before he sent it out a second time (T. 118-9)@* and the inference that follows is incorrect. McMillan did not Asend it out a second tim e.@ In fact, he testified he Awished he had...waited a couple days,@ (App.L: T.1414) and a ctually sent Avery few@ when he re-read the letter and decided to make a correction,@ (T.118). The revision was made while addressing envelopes, within hours, not days afte r a chance to reflect as the Panel suggests.

While motivation does not excuse the letter, it should be considered as mitigation. The JQC, which fails to acknowledge that someone can be remo rseful for an act while affirming that it was properly motivated, apparently o nly considers remorse if the accused admits sinister intent or improper motiv e. (See also Ocura)

CHARGE 4 B Letter to Earl Moreland

The straightforward testimony and evidence concerning this charge are not subject to a great deal of interpretation, yet the Panel and now the pros ecution=s reply completely ignore both. McMillan=s statement AI believe I will

always have the heart of a prosecutor,@ when taken in context cannot be rea sonably interpreted in the manner asserted, even by a voter most uneducate d in court matters.

The JQC convicted McMillan of a violation of the Canons by stating A*Charge # 4 is predicated upon a letter McMillan sent to Earl MorelandYcoupled with the following statement he made in a packet of materials to the editorial board of the Bradenton Hera ld:@* (FCR.11) In doing this the JQC arbitrarily Acouples@ events totally unrelated in time or content.

Similarly, the JQC partially quotes McMillan=s statement that he would not rubb erstamp plea deals (Rep.11), but conveniently deletes the sentence which follows, which negates their assertion he promised partiality: AJustice in my courtroom will depend upo n the nature of the crime and the defendant=s criminal history.@ (JQC Exh. 5) Thus the J QC has taken statements out of context, joined totally unrelated statements, and misrep resented the record to the court.

CHARGE 3; Part I B Pressure on law enforcement to support Brown

The JQC finds that McMillan had no reasonable basis to believe that l aw enforcement was pressured to support George Brown.[1] In addition to the uncontroverted direct information and threats conveyed by Mr. Sharff, (App .L: T.124-5, T.890-5), the following evidence is part of the record in this mat ter:

Fraternal Order of Police Violates Own Policy: Exh. 100 (App. B) is t

[1] The Reply cites Tom Nolan=s testimony (Rep.14), but this adds nothing to t heir position since Nolan had no involvement with the letter or its content. (T. 1039)

he FOP by-laws, faxed to McMillan by the president of the FOP region whic h endorsed Brown. These by-laws clearly require an interview process for eac h candidate before the organization may grant an endorsement. Yet McMilla n (an FOP member) was not permitted an interview, and Brown was summ arily endorsed. Exh. 101 is a letter McMillan wrote to FOP regarding this vi olation of their by-laws. They did not reply

Appearance at Candidate Forum Cancelled: A pleading filed on Febr uary 2, 2000 entitled Motion to Deny Motion to Intervene as Amicus Curiae for Limited Purpose of Expressing that the Interests of Justice are not serve d by the FSC Approval of the Pending Stipulation refers to a candidate foru m to which both Judge Brown and McMillan were invited. (App. A) The pleading states at page 4:

> AEdward Reid [an attorney and George Brown supporter] pressured Manat ee County Young Republican President Brian Tyle during the campaign p rocess to prevent Judge McMillan from attending an event with the Youn g Republicans. Then-president Tyle testified in deposition [attached] that if Judge McMillan were to show up, that based on Reid=s phone call to Ty le, >it would be very bad for the Young Republicans and that we would lo se a lot of support in Manatee County and have, you know, people against us.=@ Tyle stated after Reid called him >[he] actually made the decision th at for the better of the club to basically not have Matt come and show hi mself.=@

Violence, Threats and Pressure Exerted: Exhibit 163 is a police report made by Mrs. McMillan=s secretary, who received numerous calls instructing her to Atell that bitch..she=ll be run out of business.@ Similarly, Mrs. McMillan testified,

> A[I] would get phone calls, most often late at night when [my husband] was working. Some were obscene, and some were along the lines A=We=re going to run you out of town.= Two times they actually left a voice mail.@ (T. 873; Exh 177 is the voice mail transcript.)

Exh. 159-162 are police reports and photographs of numerous incidents of vandalism to the McMillan=s home, including obscene graffiti spray-painted on their front door and raw eggs hurled at their vehicles. The violence and harassment continued after the campaign and is relevant as it is part of an ongoing pattern of intimidation that began with Sharff=s visit and corroborates McMillan=s belief that, AWells was pressured.@ Exh.164 depicts a concrete block hurled through Mrs. McMillan=s window and the remains of her ransacked office. (Foregoing at App. B)

Unwritten Rule: Don=t Challenge Incumbent: McMillan testified of his knowledge of another judge candidate pressured into withdrawal from a race against an incumbent during the same election cycle. In July 1998, Rick DeFuria was fired by the chief judge within hours of announcing his candidacy. McMillan referred to Exh. 4 (App B), a newspaper article in which the chief judge acknowledges Acalling some of the DeFuria=s attorney friends in an effort to dissuade him f

rom running,@ AAnd eventually Rick dropped outYdecided not to run.@ (T.133, App. B: Exh 1,3,4)

Testimony of Jesse Carr: Mr. Carr, 1979-1994 Chairman of the Republic an Executive Committee of Manatee County, during which period Wells was ele cted.(T. 1320), stated they have been Afriends for over twenty years.@ He testifi ed he was Ashocked@ to learn that Wells was supporting Judge Brown (T.1320) a nd consequently called Wells to find out why in Mrs. McMillan=s presence.(T.13 21). In Wells= absence, he spoke to Wells= assistant, Lt.Lloyd [Hagaman], long-ti me personal friend of Wells and Carr.(T.389, 1328). Presented with his own swo rn affidavit pertaining to Hagaman=s response and asked if **ACharlie was under a lot of pressure by a lot of, quote, friends of George Brown=s, to endorse him, a nd felt he had no choice,@** Carr replied, AThat=s absolutely what [my affidavit] sa ys and those were the words that I used when I talked to Susan [McMillan].@(T. 1330)

Testimony of Sheriff Wells: Most telling is Sheriff Wells own testimony. He admits meeting with Judge and Mrs. McMillan (in early May 98) before M cMillan announced his candidacy (T. 377) and telling them McMillan could addr ess his officers at line-ups, an opportunity he later granted Brown but denied M cMillan. He denies telling either of them AJudge Brown was no friend to law enf orcement@ or that he would support McMillan, but couldn=t do it openly (T. 378 B 380). Wells= testimony is impeached by that of both Judge McMillan and his wife (T.881, T.1231), the notes Mrs. McMillan made during their follow-up pho ne conversation (Exh. 91), and a follow-up letter McMillan wrote him on 7/21/9

8. (Exh. 90). His testimony is further found to lack credibility in the following a reas:

a. Membership in the Good Ole Boys Club - Wells testified AI=m not a me mber of any ole boy club. I really don=t know what an ole boy club is.@ When a sked if judges are members of a Agroup of men who meet together once a month to discuss common interests,@ Wells replied AThere are no membersYThere=s no membershipYI don=t know of any membership log.@[2] (T. 380B83). Wells was imp eached by prosecution witness Judge Thomas Gallen. Asked by Mr. Levine if W ells is a member of the Good Ole Boys Club, he replied AYes, he belongs.@ Galle n testified the club has a membership Aroster,@ and he could Aget [Mr. Levine] a roster, if [he] wanted it.@ (T. 562)

b. Why he endorsed Judge Brown - The JQC falsely states that AWells tes tified he chose Brown because he was the better candidate.@ (FCR 20) **There is no such testimony in the record.** Rather, Wells conceded he changed his sworn answer five times, unable to provide an unimpeachable justification for his decis ion:

(1)Wells acknowledged he had first testified in deposition that he intended to remain neutral, but changed his position and decided to support Brown beca use he disapproved of McMillan=s campaign material. (T.393). He acknowledged that during deposition, it was brought to his attention that McMillan=s campaig n material had not yet been generated at the time of the endorsement. (T.395);

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[2]2 Wells admits he has seen Paul Sharff and Judge Gallen at the meetings.(T. 382-3)

(2)Wells then acknowledged that upon learning this, he testified in deposition he endorsed Brown because he was put off by what he heard McMillan saying in public speeches. He could not name the location of any such speech and eventually admitted he never attended any of McMillan=s speeches to hear him. (T.395);

(3) Next Wells acknowledged that in deposition he said he endorsed Brown because people told him things that McMillan was saying about Brown. (T.412) When asked who, Wells first answered A=That=s really none of your business.=@ When pressed, he next answered A=Well, I don=t remember.=@ (T.412-13);

(4) Wells then acknowledged he testified in deposition he endorsed Brown because of statements McMillan made in their May 1998 meeting about Athe number of hours Brown was working.@ However, McMillan=s inquiry as to Brown=s time in court didn=t take place until months after the meeting with Wells. (T. 1235);

(5) When reminded of this, Wells then stated he recalled McMillan complaining at their May meeting that Rick DeFuria had been black-balled for running against a sitting Judge (T. 399). However, DeFuria did not announce his candidacy until July, three months after the meeting in question. (App B: Exh.1,3,4 - July 1998 newspaper articles relating to DeFuria=s announcement and firing.)

The JQC has ignored the evidence in their finding of guilt on this charge.

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CHARGE 3; PART II B Pressuring Law Enforcement

The police officer letter reads A**Many of you have come to me with stories** of how he hasYpressured you to give preferential treatment to his children when they were arrestedY@ *(emphasis added.)* The JQC=s Reply falsely states that McMillan recklessly and Abelatedly attempted to disavow the statement,@ (Rep.16). Judge McMillan=s explanation was neither reckless nor belated, nor was it a disavowal. It was simply a correct description of the letter.

The JQC has repeatedly mischaracterized both the testimony of Dep. Dawn Atkinson and the incident in question. The Panel calls it *Atwo young people fighting or engaged in a prank in the Brown home.@*(RCR.21). The Reply states it was *noncriminal Ahorseplay between children.@*(Rep.14) Dep. Atkinson, dispatched to take the complaint, recalled that she learned Judge Brown=s **adult** son had held a 12 year old neighbor=s head in the toilet. (T.709) She stated she took the report from the victim=s mother, and then she received a message at work from Judge Brown telling her to call him, leaving both his home and work numbers. She felt uncomfortable calling him at home, so she returned his call at the office. (T. 711).

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[3] [illegible]

□

Dep. Atkinson stated in her opinion Brown was Ademeaning and intimidat ing@ when she returned his call. (T. 711-712). AHe became angry right away. › Why didn=t you call me? Why didn=t you -- before you turned this report in, w hy didn=t you get his side of the story?=@ (T. 740) She explained it was not prop er protocol for her to call the father of an adult suspect prior to turning her repo rt in (T. 712). When she told him that, he said A=My son is going into the Mari nes, and this is going to mess everything up.=@ (T. 712-713) She imitated his an gry tone of voice in an effort to convey to the panel the level of intimidation he imparted.

She testified as to the repercussions that followed: **From that point on**, Ju dge Brown=s sentences on her cases Awere either lax or dismissed or adjudication withheld.@ AAnd that was the only judge that I=ve had that kind of...problem wi th.@(T.713-14). This discriminatory treatment continued until it became so sever e that Dep. Atkinson preferred to dismiss her cases than appear before Judge Br own, so as not to A[waste] my time or his time or the defendant=s time.@ (T. 714 - 715.)

She testified that she kept this incident to herself until she ran into McMil lan at a dry cleaner and related the incident to him. While conceding that Brow n did not specifically say the words: AGive my son given preferential treatment,@ she testified she did have the clear impression that he was seeking preferential t reatment when he made the call to her, and she related that impression to McM illan. (T.752-3).

The JQC again misstates the record, falsely asserting that Atkinson testifi

ed A*clearly that Brown=s* ***only statement*** *was that she failed to take any stateme nts from his son.*@ (FCR.21) The Reply states that Athe Panel=s conclusion rests upon a sound evidentiary basis.@ (Rep. 15) The record totally contradicts this c onclusion.

CHARGE 5 - Fines and Court Costs

Contrary to the position of the JQC, collecting court costs is an administr ative matter. (Rep.19) Further, it is disingenuous for the Panel to conclude by c ircumstantial evidence that Judge McMillan was attacking Judge Brown person ally simply because he was running against him. By this logic, any time a chall enger makes any statement regarding failures of the court system, it could be co nstrued as an unfair attack against the opponent, and thus a knowing misrepres entation.

The remaining substance of this charge is thoroughly addressed at Res. 2 1-26, including the Panel=s outrageous assertions that the Clerk=s Office figures were either A*known to be extremely inaccurate,*@ (FCR.26) or were *claimed by M cMillan to be* A*erroneous*.@ (Rep.27).McMillan conducted exhaustive research usi ng official county documents, and his findings as to the failure of the local judici ary, as well as Judge Brown, to adequately collect fines, court costs and restituti on were undisputed and independently confirmed by experts such as statistician s, accountants and researchers. The exhibits illuminate the remarkable and ext raordinary improvements resulting from McMillan=s collection methods over that of his predecessors. The Court is urged to review the graphs in App. C, and the

underlying research and expert testimony in App. D, confirming that the data was Aextremely accurate,@ Atrue to county documents,@ and Aundisputable mathematically@.

CHARGE 6 B George Brown=s Work Ethic

This charge was thoroughly addressed in Judge McMillan=s Response (pp.26-42), but the following issues require reiteration:

1) The JQC condemns Judge McMillan for maintaining that his criticisms of Brown=s work ethic were truthful. (Rep.47) Extensive court records independently verified notwithstanding (T.986;Exh.237;App.E), numerous witnesses unconnected with candidate McMillan testified as to Brown=s poor work ethic (see App. F), specifically, that he was regularly seen at home during normal working hours, seen arriving late, and often seen leaving the courthouse early in the day without returning. In fact, he was awarded the ACaspar the Friendly Ghost Award@ by the Bar=s Young Lawyers= Division due to his well-established reputation.(T. 1160) Even his own campaign advisor, Mr. Sharff, described him as A=lazy=@ and >@not hard-working=@(T.892), but took the 5th Amendment in deposition when queried.

2) The JQC claims McMillan=s decision to focus upon County Court only and exclude early morning advisories when calculating days off from court was a deliberate attempt to mislead the public. What is truly misleading is the JQC=s attempt to portray the 30-45 minutes Brown sometimes spent in early morning advisories as a full day in court (Rep.28, App.at 14), when in fact he held no county court between 8:30 and 5:00 and very well may have gone home for the day.

(AppF)

3) The JQC refuses to acknowledge that McMillan=s intended message was clear and corroborated: Brown spent less time in court in relation to other judges in comparable positions statewide measured by the **same criteria** including the **exclusion of advisories** when calculating days off from court.[4] Mrs. McMillan testified that in order to ensure the reliability of the method used to calculate Brown=s court time, identical docket research was conducted on Judge DiVilbiss (App.E: Exh.13), a judge in a neighboring county with a comparable caseload, as well as a statewide survey. (App E: Exh. 13, 14). Then, as to Exh.15, she testified:

> AWe charted out the other judges= time in court [based upon a statewide survey, Exh. 14] and how it compared to Judge Brown just to make sure that we were being fair and basing our criticism of him in comparison to other judges. Not that he was taking vacation time not that he wasn=t in the courthouse, but that compared to other judges with similar case loads and similar positions, he was spending less time in court than they were. And I just want to say we did our best. It was extremely tedious, and we were trying to be accurate, and we thought we had a valid point.@ (T. 803)[5].

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[4] The JQC=s reliance on Brown=s personal calendar is dubious (FCR 29) It was proven discrepant with official court records, with other judges often presiding over Brown=s purported docket. (T. 808-813)

[5] Even when advisories are excluded for Judge DiVilbiss, just as they were for Brown, DiVilbiss shows 34 days off from court in ›97, compared to Brown=s 84. If advisories had been counted as full days in court, as the JQC portrays at Rep. 28 & JQC App. Tab 14, the public would have been deceived into believing Brown actually spent more time in court than DiVilbiss and had a similar work ethic.

An 8/13/98 newspaper article also supports McMillan=s contention, stating:

> AMcMillan took issue with Brown=s record at times, for example citing research that showed him to put in only 12 hours of time holding court per week. McMillan compared that unfavorably with other judges in comparable positions in other counties.@ (Exh 16)

4) The record is clear that McMillan instructed Tom Nolan to change the Part-time Problem brochure to reference the survey results of other judges= court time and delete the Aover-loaded system@ phrase. (Res.35) McMillan testified that had his instructions been obeyed, the brochure would not have been as open to misinterpretation. Thus AIf I could take this back, I would. If I misled anyone, that was not my intent@.(App L:T.1403). As Nolan had previously testified the brochure was faulty due to his failure to correct it after being so instructed,[6] it lends little to the JQC=s position to point out that Nolan and Jesse Carr interpreted the brochure as leading voters to believe that Brown had not been working at all on 84 and 86 days.

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[6]When Nolan=s testimony is read in its entirety, he clearly states McMillan=s message was Athat Judge Brown didn=t spend enough time in Court,@ that Ahe was not presiding in court on those 84 days,@ and days off from Court does not necessarily mean someone is not working. (T. 1092-3). Jesse Carr=s testimony, when read in its entirety, conveys that Carr misunderstood the point of the question posed, interpreting Anot at work@ to mean A[not] utilizing the taxpayers= money to

5) The record is replete with the testimony of Judge McMillan acknowledging that his brochure could be misinterpreted by the public (T.1404) and expressing his sincere remorse for his poor and inartful choice of words, particularly regarding Adays off from court.@ (App. L: T. 1403, 1404, 1406, 1408, 1424, Res.39-41)

CHARGE 7 B Overloaded Court System

The defense to this charge is addressed in McMillan=s Response. The JQC completely ignores Nolan admitting he was instructed to delete this phrase (T.1040-1, 1044) yet failed to do so,[7] and finds a knowing and intentional misrepresentation.

CHARGE 8 B Prostitution Sentences

McMillan concedes there is no statute governing prostitution relocation, but rather, it is a routine condition of probation which Brown failed to use even once during his 16 year tenure (App. C p.2; App. D: Exh. 44-48). McMillan submitted the documents on which his mistaken deduction was based (App. G), and concedes his error, not with regard to Brown=s sentencing practices per se, but with regard to the existence of a relocation statute, which he first learned was an issue at trial. The JQC insists he acknowledge the mistake was a knowing misrepresentation.(Rep.30)[8]

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do something for the taxpayers;@ not that he wasn=t in the building. (T.1327)

[7] McMillan takes responsibility for any errors of his staff. (See App L: T.1266, 1293)

[8] The JQC posits if a mistake is made, wherein the accused could have found the correct information, the mistake must be intentional. Given this logic, law libraries are filled with books recording the intentional misapplication of the law by judges!

CHARGE 9 B Vincent Born

This charge is fully addressed at McMillan=s response (45-47) and App. H. Again the JQC demands 100% accuracy and any mistake is automatically inte ntional, chilling fee speech and meaningful debate to the point of nonexistence.[9]

CHARGE 10

The charge stems from McMillan=s response to Brown=s campaign flyer (A pp.B Exh.94).The JQC states McMillan suggests to the public that a judge=s rep utation for leniency is the Aonly reason@ for a small number of jury trails. (Rep.3 5) McMillan never made such a statement either in his brochure or his testimo ny. Of course many factors affect the number of trials held, but it is common kn owledge and logic that a more lenient judge, one prone to accept whatever plea deals attorneys negotiate no matter how light the sentence, will have fewer trial s.

CHARGE 11

[9] The JQC dismissed the portion of Charge 8 dealing with the misrepresentation of domestic battery offenders, of which Vincent Born was one. Again, McMilla n did not misrepresent the incumbent=s sentencing practices per se, but erred in choosing Born as an example, a mistake for which he has accepted responsibility and admitted regret. (App. L: T. 136-7, T.1266)

The JQC asserts it was proper to find McMillan guilty of this Acatch-all@ c harge. However, the campaign occurred in 1998. If McMillan had continued, p ost-election or since taking the bench, to produce and distribute literature or ma ke public statements insulting or demeaning to the judiciary, then the JQC coul d properly claim that he has engaged in a *continuing pattern of misconduct*.[10] However, there has been absolutely no evidence that Judge McMillan has been hostile to or critical of the judiciary since taking the bench.. There is ample testi mony, however, that he has worked tirelessly to make changes (App J) that hav e bolstered the public perception of the judiciary, and that his courtroom demea nor has been exemplary. (See App I: Public Confidence and App. K: witness tes timony)

The Ocura Matter

[10]This is a misapplication of law. Unless charged with racketeering or conspir acy, it is improper to charge each incident individually and then again as a w hole.

Judge McMillan has expressed remorse over the Ocura matter, readily ackn ow-ledges he should have been more circumspect (T. 189,190, 184), has taken st eps to ensure he never repeats this type of error (T. 1397, 1427), and does not c ontest he offered to assist Judge Farrance. However, he takes issue with the JQ C=s finding of lack of candor, which is based upon their acceptance of the conflic ting testimony of Farrance.[11] (FCR.35) In attempting to bolster Farrance=s vers ion, the JQC misrepresents the record, falsely stating *ABoth Ms. Rosas and Judg e Farrance testified that Judge McMillan initiated the conversation [between Mc Millan and Farrance] (T. 3-478)@*(Rep 43). In truth, Rosas was never asked who initiated the conversation, nor did she offer such testimony. In fact, when asked by Mr. Barkin if she heard the conversation in question, she responded AThey w ereYin the doorway and I wasn=t paying attention to what they were saying.@(T. 478)

The mitigation surrounding the Ocura matter has been thoroughly addressed at Res. 55-64, however the Court is urged once again to look askance at the entire JQC Reply; a report which incorrectly cites testimony in an apparent effort to i ncrease the likelihood that their recommendation will be approved.[12]

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[11] Although Farrance testified he was already seated to begin advisories when ap proached by McMillan and that they did not have a conversation in the doorwa y regarding his preparedness for trial, he is directly contradicted by not only Mc Millan and Valerie Rosas, (Ocura Exh.12, T.474-5, 477-8), but also prosecutor S teve Viana.(T.1382). When confronted with the conflicting testimony in Rosas= affidavit, (Ocura Exh. 12), Farrance responded AShe had a different position, I g uess.@(T.297) Even Mr. Barkin recognized Farrance=s version was incorrect (T.1 81,lines 5-6).

[12] The JQC states AMcMillan refused to express any regret (T. 1-127)@ regarding

The JQC Reply supports its argument for removal with Judge Gallen=s t estimony. This is remarkable since the Panel fails to even mention Gallen=s na me in its 42-page Findings. Gallen, who testified in deposition McMillan was fi t then filed an amicus brief opposing the 1/17/01 Stipulation, and who has neve r observed McMillan in court, was impeached on almost every point of his testi mony. Most notably, during the trial, he evidently attempted to violate the Cou rt=s order of sequestration by having audio/video cables run from the courtroom directly into his personal hearing room. The plot was foiled when a county empl oyee came forward. Steve Smead, the county telecommunications technician, tes tified he was instructed Anot to say anything@ if asked what he was doing. (T.69 2-3) Gallen further compounded his deception by denying under oath any knowl edge of the incident.(T.540) Apparently, the Panel found his testimony as a who le lacking in credibility and of no value.

Witnesses with actual knowledge of Judge McMillan=s courtroom demea nor and performance testified, providing overwhelming evidence of his fitness for office. (App. K). Additionally, evidence was submitted showing his tenure has s ignificantly increased pubic confidence in the judiciary. (App. I, J) During the fi nal hearing, Panel Member Booth said: **AYIt=s just so commendable. And I=m j ust asking if you expect every judge to be as zealous and as creative and to wo rk so hard and as many hours as you do, or are you always going to be the exc eption?@** (T. 1427) It is the dedication of Judge McMillan, evinced in this single

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his support for police officers= efforts. (Rep.47) The Court is urged to read the t estimony in its entirety (App L: T.126-7) and note the mischaracterization of th e record from which the JQC recklessly concludes all other expressions of regret

question, that should make this Court reluctant to remove this courageous and outstanding judge. The respondent respectfully requests that the Court reject the recommendation of the JQC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery to Marvin E. Barkin, Esq., 101 E. Kennedy Blvd., Suite 2700, Tampa, FL 33602, via Federal Express to John Beranek, Esq., 227 S. Calhoun St., Tallahassee, FL 32301, via hand delivery to Thomas C. McDonald, Jr., 100 N. Tampa Street, Suite 2100, Tampa, FL 33602, via hand delivery to Scott Tozian, Esq. 109 N. Brush St., #150, Tampa, FL 33602, via hand delivery to Lance C. Scriven, Esq., 633 N. Franklin St., Suite 600, Tampa, FL 33602 via Federal Express to Brooke Kennerly, Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399 and via Federal Express
to the Florida Supreme Court, Supreme Court Clerk=s Office, 500 S. Duval Street, Tallahassee, FL 32399-1927, this .... day of March, 2001.

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found in App. L are negated.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that the Brief complies with the font requirements of Rule 9.210, Fl.R.App.P. The font used in this matter is Times New Roman 14.

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